

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

v.

SCOTT CODY HUDSON,

Defendant.

3:99-cr-00158-RCJ-VPC

ORDER

Currently before the Court is Petitioner Scott Cody Hudson's Motion to Correct Sentence or Vacate Restitution Order Pursuant to 28 U.S.C. § 2255 (ECF No. 288). For the reasons given herein, the Court denies the motion.

BACKGROUND

Petitioner was found guilty of a crime and sentenced to 180 combined months imprisonment and ordered to pay \$3,743.50 restitution. Mot. to Vacate, ECF No. 288, Case No. 3:99-cr-00158 at 2. The Court ordered restitution below the guideline range because Petitioner was unable to pay within the guideline range. *See id.*; *see* 18 U.S.C. § 3663(a).

During incarceration, the Bureau of Prisons informed Petitioner of voluntary payment options to satisfy the restitution order. ECF No. 288 at 3. Petitioner alleges that he has been punished because of his inability to pay the voluntary payments. *Id.* Petitioner argues that the Bureau of Prisons' Inmate Financial Responsibility Program has no authority to establish and enforce a payment plan. *Id.* at 4–5. Further, Petitioner asserts that the payment demanded by the Bureau is "beyond not favorable." *Id.* at 4. Therefore, Petitioner requests an order to vacate the restitution penalty or for a re-sentencing to establish a proper payment schedule.

DISCUSSION

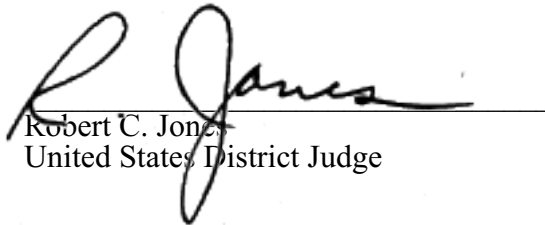
Relief under § 2255 is "available only to defendants who are in custody and claiming the

1 right to be released. It cannot be used solely to challenge a restitution order.” *United States v. Thiele*,
2 314 F.3d 399, 401 (9th Cir. 2002) (quoting *United States v. Kramer*, 195 F.3d 1129 (9th Cir. 1999)).
3 Because Petitioner is seeking relief from restitution, 28 U.S.C. § 2255 does not provide relief.

4 **CONCLUSION**

5 For the foregoing reasons, IT IS ORDERED that the Motion Pursuant to 28 U.S.C. § 2255 to
6 Vacate or Set Aside the Restitution Penalty (ECF No. 288) is DENIED.

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8 DATED: This 11th day of May, 2011.

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11 Robert C. Jones
12 United States District Judge
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